

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

FEB -8 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2010-0274-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
LYNDALL DWAIN THOMPSON,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20072584

Honorable Howard Fell, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

Barton & Storts, P.C.
By Brick P. Storts, III

Tucson
Attorneys for Petitioner

ESPINOSA, Judge.

¶1 Lyndall Thompson petitions this court for review of the trial court’s order denying his petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb this ruling unless the court clearly has abused its discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Thompson has not sustained his burden of establishing any such abuse here.

¶2 After a jury trial, Thompson was convicted of murdering his brother and was sentenced to a presumptive, sixteen-year prison term. On appeal from that conviction, counsel filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), stating he had found no arguable issues to raise on appeal. Thompson filed two supplemental briefs but, finding the arguments therein without merit, this court affirmed his conviction and sentence. *State v. Thompson*, No. 2 CA-CR 2008-0236, ¶¶ 1-2, 7 (memorandum decision filed Sept. 24, 2009).

¶3 Thompson then initiated Rule 32 proceedings, arguing in his petition that trial counsel had been ineffective (1) in failing to move to suppress as involuntary the statements Thompson had made to police detectives and (2) in failing “to move for additional disclosure” about who had located the weapons involved in the offense and where those weapons had been found.¹ As to the first claim, Thompson asserted his

¹Thompson also claimed in his petition below that the “redaction of [his] statement was improper under the circumstances.” He does not mention this argument on review and we therefore do not address it. *See* Ariz. R. Crim. P. 32.9(c)(1) (petition for review shall contain “[t]he reasons why the petition should be granted” and “specific references to the record”).

confession had been involuntary because it was induced by a promise. At the beginning of his interview with detectives, after being read the *Miranda*² warnings, Thompson told them they could ask anything they wanted, he was his “own lawyer,” and “I’ll ask you anything I want, if you stop answering questions for me, then I’ll stop answering questions for you.” One of the detectives said “Okay,” and Thompson proceeded to give a statement. Thompson argued in his petition that this “quid pro quo” rendered his statement involuntary.

¶4 Regarding his second claim, Thompson argued counsel had been ineffective in failing “to move for additional disclosure as to who found the . . . weapons or [to] preclude testimony as to the exact location of discovery of the weapons.” At trial, several law enforcement officers testified an SKS rifle and a .45 caliber pistol had been found next to each other on a vehicle at the scene. None of them testified they personally had found the weapons. According to Thompson, the testimony that the weapons had been on the vehicle was inconsistent with his version of events and that counsel therefore should have investigated further the location of the weapons before trial or moved to preclude the testimony. The trial court summarily dismissed the petition, ruling Thompson’s claims were without merit and, in any event, he had not established he had been prejudiced by either claimed instance of ineffectiveness. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984) (to present colorable claim of ineffective assistance of counsel, defendant must show counsel’s performance deficient under prevailing professional norms and deficient performance prejudiced defense).

²*Miranda v. Arizona*, 384 U.S. 436 (1966).

¶5 On review, Thompson contends the trial court erred in summarily denying his petition. He reiterates and expands upon many of the arguments made below, arguing the court erred in rejecting them, but also contests the court’s ruling that he had not established prejudice. Specifically, on the claim related to his statements to detectives, relying on *Riggins v. Nevada*, 504 U.S. 127 (1992), Thompson asserts “the trial court erroneously imposed upon [him] the burden of demonstrating an alternate outcome of the proceedings instead of presuming prejudice based on a due process violation.” But we find that case inapplicable here. *Riggins* was decided after a direct appeal, not pursuant to a post-conviction proceeding analogous to our Rule 32, and addressed claims made by a defendant placed on antipsychotic medication against his will during trial. *Id.* at 137. In the context of an ineffective assistance of counsel claim like the one before us, as the court correctly set forth, a petitioner bears the burden to show counsel’s deficient performance prejudiced him—“that counsel’s errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.” *Strickland*, 466 U.S. at 687.

¶6 We agree with the trial court that Thompson has not met that standard. And the court also correctly rejected Thompson’s other claims in a thorough and well-reasoned minute entry. We see no purpose in repeating or embellishing the court’s rulings on those claims here, and therefore adopt them. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (when trial court correctly identifies and rules on issues raised “in a fashion that will allow any court in the future to understand the resolution[, n]o useful purpose would be served by this court rehashing the trial

court's correct ruling in a written decision"). Thus, although we grant Thompson's petition for review, we deny relief.

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Presiding Judge